

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3998 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
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GOVINDBHAIN S PATEL

Versus

STATE OF GUJARAT

Appearance:

MR PS GONDALIYA FOR MR YOGESH S LAKHANI for Petitioner
MR LR PUJARI ASSTT GOVERNMENT PLEADER for Respondent No. 1
MR NALIN K THAKKER for Respondent No. 2

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 23/06/2000

ORAL JUDGEMENT

#. The petitioner challenges the revisional order of the State Government dated 4th February, 1986 confirming the order of the Deputy Collector, Anand dated 25th May, 1984 by which he had declared transaction dated 5-1-1976 as void under Section 9(1) of Fragmentation Act, 1947 and

ordered eviction of the petitioner in accordance with Section 9(3) of the Act.

#. According to the petitioner, he had purchased the share of the respondent No.2 in the land in question bearing Block No.943 of village Agarva under registered sale deed dated 5th January, 1976 and had become absolute owner of that land. Block No.943 consisted of land bearing Survey Nos.761/1 and 761/2 which belonged to the respondent No.2 and his brother Punjabhai. The respondent No.2 had earlier mortgaged his share in the said land to the petitioner. In the fragmentation case in respect of the said transfer and sub division of the block, the Deputy Collector after hearing the parties decided that the lands Survey No.761/1 admeasuring 2 acre and 5 gunthas and 761/2 admeasuring 3 acre and 6 gunthas were given block No.943 as per the consolidation scheme and 1/2 of that land was sold to the petitioner resulting in the subdivision of the block and violation of provisions of Section 31 of the said Act. Therefore, the transaction was declared to be void and nonest under Section 9(1) of the Act. It is settled legal position in the context of the provisions of Section 9(1) of the said Act that such void transaction is to be treated as nonest and can be declared as such at any stage.

#. The learned counsel for the petitioner strongly contended that the provisions of Section 31(1) cannot apply to this case because the transaction took place on 5-1-1976 which brought the case between two dates contemplating sub Section (2)(b) of Section 31 of the said Act, in which it was provided that nothing in sub Section (1) shall be deemed to ever have applied to transfer of holding allotted under the Act made after 19th February, 1969 but before the date of commencement of the Amendment Act 1978 which is said to be 19-2-1979. It was also contended that as per the report of the Talati-cum-Mantri of the village as forwarded by Mamatdar which is at Annexure-'C' collectively at page 29 and 30, the scheme was not implemented and therefore, there was no question of any violation of the provisions of Section 31(1) of the said Act. The learned counsel also argued that the provisions of Section 6(2) of the said Act requiring notice which refer to notice of every entry made under sub section (1) of record of rights were not complied with.

#. The question that the cosolidation scheme was not implemented in village was never raised before the lower authorities by the petitioner. It is for the first time that some papers have been annexed with the petition

which are ordinary copies which show that Talati-cum-Mantri had reported that the scheme was not yet brought into effect. It will be noted that with same Annexure-C collectively at Page 27, there was also a report in which Talati-cum-Mantri had stated that consolidation scheme was introduced in the year 1960-61. It was however stated that it was not yet implemented. Whatever that means, the fact remains that no such contention was ever raised before the authorities below. There is in fact a clear reference in the order of the Deputy Collector that it was the Mamlatdar, Thasra who had forwarded the case for initiating proceeding on the ground that there was violation of the provisions of the said Act. It was recorded that consolidated land was given block No.943. The parties were heard and it appears that no such contention that scheme was not in force was ever raised. There is a clear finding in the order of the Deputy Collector that from the papers on record, it appeared that Survey Nos.761/1 and 761/2 were given block No.943 on the basis of the consolidation scheme and that it was out of that block, 1/2 land was sold to the petitioner by the respondent No.2. Even in the revisional order, it is clearly recorded that the advocate who appeared for the petitioner had raised a contention that this block No.943 was given to the lands bearing Survey No.761/1 and 761/2, out of which, the share of respondent No.2 was sold under the registered sale deed to the petitioner. The revisional authority in para 4 of its order gave a finding that the whole land of Survey No.761/1 and 761/2 which belonged to two brothers was given block No.943. It was also found that the consolidation scheme had come into force in the village Agarva in the year 1960-61 and despite that scheme coming into force, block no.943 was sub divided by selling 1/2 of the entire land under the sale deed dated 5-1-1976 to the petitioner. In face of these concurrent findings of fact by both authorities, it cannot be said that the scheme was not brought into force and that there was no violation of the provisions of Section 31. The facts found by the authority below indicate that block No.943 was subdivided by virtue of the sale transaction of 1/2 share of the respondent No.2 in favour of the petitioner under the registered sale deed dated 5-1-1976. There is therefore no substance in the contention raised on behalf of the petitioner that case falls within provisions of Section 31(2) (b) of the said Act and therefore, sub section (1) of Section 31 did not apply. As regards the contention that there was no notice issued under Section 6(2) of the said Act, admittedly, no such contention was ever raised and the contention does not appear germane to the facts of the case. As recorded in the order of the

Deputy Collector, the petitioner was heard in the matter. Even the revisional authority has made order after hearing the counsel who appeared for the petitioner.

#. It cannot therefore be said that the revisional authority has committed any error apparent on the face of the record in passing the impugned order by which, it confirmed the order passed by the Deputy Collector. There is absolutely no warrant for any interference with the impugned order. The petition is therefore rejected. Rule is discharged with no order as to costs.

Date : 23-6-2000 [R.K.Abichandani, J.]

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